

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14.447

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Aging and Disabilities closing her Vocational Rehabilitation case. The preliminary issue in this matter is whether the Department's motion to dismiss for lack of residency in the state should be granted.

FINDINGS OF FACT

In lieu of a hearing, the parties have agreed to the following facts:

1. On November 11, 1993, [petitioner] was certified as eligible for vocational rehabilitation services by her counselor, [name].
2. At the time she was receiving vocational rehabilitation services, [petitioner] resided on [address].
3. On June 18, 1996, [counselor] sent a letter to [petitioner] informing her that there were no further services that the Division of Vocational Rehabilitation could provide, and that closure of her case had begun. The letter also informed [petitioner] that closure would be complete within three weeks from the date of the letter.
4. On July 1, 1996, [petitioner's attorney], with the Client Assistance Program, wrote on behalf of [petitioner] to [name], Division of Vocational Rehabilitation, requesting an appeal of the Division's decision to close [petitioner's] case without providing further services. The Division sent the request for a fair hearing to the Human Services Board on July 9, 1996.
5. In July or August of 1996, [petitioner] resigned from her position at [college], where she had been employed since 1989. In August, 1996, [petitioner] put the home she owned in [Vermont], on the market and moved to Wisconsin, where she is enrolled in a Ph.D. program.
6. [Petitioner] has no immediate plans to return to Vermont to reside. She intends to reside where she

can find employment after receiving her degree. Her employment may or may not be in Vermont.

ORDER

The Department's motion to dismiss is granted.

REASONS

There is no question that a person must be a Vermont resident to receive benefits or services through the state's Vocational Rehabilitation program. See Section 1029a(5)(A) of the Rehabilitation Act of 1973, cited in the Department's memorandum (attached). The regulations promulgated pursuant to that act favor the inclusion of persons who are actually present in the state as "residents" for purposes of this program and prohibit durational and other residency requirements. 34 C.F.R. § 361.31(a)(2), Vermont Vocational Rehabilitation Services Manual, § 205.1. Those regulations cannot rationally be interpreted to mean, however, that the state cannot impose some test for residency on a person who is absent from the state.

There is no such test adopted in the Department's own regulations. For guidance, then, it is worthwhile to look at the definition of "resident" found in the Vermont statutes governing the right to vote. That statute contains the following definition:

"Resident" means a natural person who is domiciled in this state as evidenced by an intent to maintain a principal dwelling place in the state indefinitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent. A married person may have a domicile independent of the domicile of his spouse.

17 V.S.A. § 2103(30)

The statute further states that:

A person shall not gain or lose a residence solely by reason of his presence or absence . . . while a student at any education institution.

17 V.S.A. § 2122(a)

The above statutes make it clear that mere absence from the state cannot disqualify a person from residence status for purposes of voting and that is especially true if the person has gone out of state only to pursue an education. However, other circumstances in combination with that absence may indicate that the person has indeed given up her residency and is not just temporarily absent from the state for education or otherwise. The above statute would require the petitioner to at least intend to maintain a principal dwelling place in Vermont indefinitely and to intend to return there when the temporary absence is finished.

If the above test is used to determine the petitioner's residency in Vermont, she fails to measure up. The petitioner put on no evidence that she intends to maintain a principal dwelling place in Vermont or that she intends to return when her education is finished. On the contrary, her former dwelling place is for sale and she has not indicated that she has any other place she considers home in Vermont. Even more

telling, however, is the petitioner's affirmative indication that she has no definite intent to return to Vermont to reside in the immediate future or after she receives her degree. That lack of intent to return to the state deals a fatal blow to her claim for residency.⁽¹⁾ As the petitioner has not shown that she is a resident of the state who is merely absent to pursue her education, she cannot be found to be a resident who is eligible for Vocational Rehabilitation Services in the state.

In the alternative, the petitioner argues that her case should not be dismissed because she was a resident at the time she was notified that her case was closed. Her argument is that she could be granted services or benefits retroactive to the time when she did live in the state. The evidence shows that the petitioner appealed the decision to close her case because VR believed she was ineligible for any further services. If an appeal were heard on that case, the focus would not be on whether she should have received some services in the past because services cannot be provided retroactively. The focus at any hearing would be whether the Department had wrongfully closed her case and whether it should be reopened with the current provision of rehabilitation services. If she is no longer a resident, the Board would be without the authority to order the Department to reopen her case and provide her with prospective services. Therefore, the petitioner's lack of current attachment to the state cannot be cured by styling her relief as retroactive.

If the petitioner does return to Vermont, she can reapply for services. Since states are not allowed to impose durational or special residency tests for VR applicants, the petitioner can clearly apply for VR services in the state of Wisconsin where she is now present.

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1. Allegations made in the petitioner's memorandum involving her intention to vote here in the fall and other indicia of her connection with the state were not contained in the stipulation to which she agreed and cannot be considered facts herein.